

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
SEARS HOLDINGS CORPORATION, *et al.*,<sup>1</sup> :  
Debtors. : Case No. 18-23538-rdd  
: (Jointly Administered)  
: Re: Docket No. 2852  
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**ESL AND TRANSFORM'S RESERVATION OF RIGHTS IN RESPONSE  
TO DEBTORS' NOTICE OF PRESENTMENT OF STIPULATION AND ORDER  
PERMITTING PENSION BENEFIT GUARANTY CORPORATION TO FILE  
CONSOLIDATED PROOFS OF CLAIM UNDER A SINGLE CASE NUMBER**

ESL Investments, Inc. and its affiliates (including JPP, LLC and JPP II, LLC) (collectively, “ESL”), and Transform Holdco LLC (“Transform”), hereby submit this response (the “Response”) to the *Notice of Presentment of Stipulation and Order Permitting Pension Benefit Guaranty Corporation to File Consolidated Proofs of Claim under a Single Case Number* filed on March

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

15, 2019 (the “Proposed Stipulation and Order”) by and among Sears Holdings Corporation and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), and the Pension Benefit Guaranty Corporation (“PBGC”) [Docket No. 2852].

### **RESERVATION OF RIGHTS**

1. ESL and Transform do not oppose PBGC filing a single consolidated proof of claim in the above-captioned case, and do not otherwise object to the relief sought in the Proposed Stipulation and Order. In determining not to object, ESL and Transform are relying on the clear language in the Proposed Stipulation and Order stating that it “is intended solely for the purpose of administrative convenience and shall not affect the substantive rights of . . . any other party in interest,” including ESL and Transform. Proposed Stipulation and Order ¶ 2 (emphasis added).

2. ESL and Transform reserve their rights to object, in particular, to the assertion in Recital D of the Proposed Stipulation and Order that Sears’ Pension Plans terminated on January 31, 2019, on the grounds, among others, that such termination – accomplished without Bankruptcy Court approval – is not presently effective and that the settlement pursuant to which Debtors agreed to such termination has not yet been presented to or approved by the Court. *See Sale Hr’g Tr. 19:19-25, 20:5-20* (Feb. 7, 2019) (Debtors noting that the “settlement [was] not up for approval today” and assuring the Court that they would “promptly” seek approval”); *Notice of Filing Settlement Term Sheet with Pension Benefit Guaranty Corporation* [Docket No. 2529] at 2 (“[T]he Debtors will be promptly documenting the PBGC Settlement with the PBGC and will seek approval of the PBGC Settlement by the Bankruptcy Court on notice to the Parties.”); *Fed. R. Bankr. P. 9019; Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating*

*LLC*), 478 F.3d 452, 455 (2d Cir. 2007) (“Before pre-plan settlements can take effect, however, they must be approved by the bankruptcy court pursuant to Bankruptcy Rule 9019.”).

3. ESL and Transform further reserve their rights to object to any other relief that might prejudice their respective rights.

Dated: March 22, 2019

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